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11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,  
15  
16 Plaintiff,  
17  
18 v.  
19 ALLEN AGLER,  
20  
21 Defendant.

No. CR 11-542-JFW  
CR 11-543-JFW

ORDER GRANTING THE GOVERNMENT'S  
UNOPPOSED MOTION TO ABATE THE  
PROSECUTION OF DEFENDANT ALLEN  
AGLER AND DISMISS THE CHARGES AS  
TO DEFENDANT AGLER

22 Having considered the Government's Unopposed Motion to Abate  
23 the Prosecution of Defendant Allen Agler and Dismiss the Charges as  
24 to Defendant Agler, the supporting declaration of Stephen A.  
25 Cazares, the records and files in this case, and argument by the  
26 parties at the July 8, 2013, hearing on this matter;

27 THE COURT FINDS that that on June 15, 2011, a grand jury  
28 returned two indictments, CR 11-542-JFW and CR 11-543-JFW, that  
charged defendant Agler variously with conspiracy, mail and wire

1 fraud, and the sale of unregistered securities. The charges related  
2 to defendant's participation in the sale of investments in  
3 independent films produced by Michael Sellers and his Q Media  
4 production entities in CR 11-542, and by Cinamour Entertainment in  
5 CR 11-543. On December 9, 2011, defendant pleaded guilty to counts  
6 one (conspiracy) and thirteen (wire fraud) of CR 11-542-JFW (Q Media  
7 indictment), and to counts one (conspiracy) and twenty (wire fraud)  
8 of CR 11-543-JFW (the Cinamour indictment). Defendant Agler's  
9 sentencing hearing was originally scheduled for July 9, 2012, and  
10 was later continued several times, ultimately, to April 26, 2013.

11 THE COURT FURTHER FINDS that on March 19, 2013, defendant  
12 passed away, before his sentencing, the entry of any judgment and  
13 commitment order, and while defendant still possessed rights of  
14 appeal of his pending convictions. For these reasons, as set forth  
15 more thoroughly below, the government moves the Court for abatement  
16 of defendant's prosecution and the dismissal of all charges in the  
17 indictments as to defendant.

18 The death of a defendant pending direct appeal abates the  
19 appeal and the underlying prosecution. See United States v.  
20 Oberlin, 718 F.2d 894, 895 (9th Cir. 1983). Under such  
21 circumstances, the pending appeal should be dismissed, any judgment  
22 vacated, and the indictment dismissed. Id. This rule of abatement  
23 similarly applies where, as here, a defendant dies before entry of  
24 judgment and before the filing of any notice of appeal because the  
25 defendant still possessed an appeal of right from his conviction at  
26 the time of his death. Id. at 896. In the instant matter,  
27 defendant passed away on March 19, 2013, before his sentencing, the  
28

1 entry of any judgment, and while defendant still possessed an appeal  
2 of right from his pending conviction.

3 ACCORDINGLY, FOR GOOD CAUSE SHOWN, THE COURT ORDERS that the  
4 government's motion for abatement of the prosecution of defendant  
5 Agler is GRANTED.

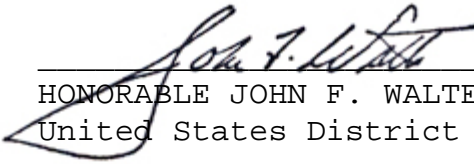
6 THE COURT FURTHER ORDERS the prosecution of defendant Agler  
7 abated and all charges against defendant Agler dismissed as follows:

8 CR 11-542-JFW, counts 1, 9-11, 13, 14, 17, and 26; and

9 CR 11-543-JFW, counts 1-3, 5, 7, 20, 26 and 29.

10 IT IS SO ORDERED.

11  
12 DATED: July 10, 2013

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16 HONORABLE JOHN F. WALTER  
17 United States District Judge  
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